U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 15 2006

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition, the petitioner was a senior research associate at Northwestern University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In a statement accompanying the initial filing, the petitioner states:

> My research has involved health services research and epidemiology of cardiovascular diseases and related conditions. . . .
>
> Currently, I am a post-doc at the Institute for Health Services Research and Policy Studies of Northwestern University, and soon (September 1, 2003) I will be a researcher at Division of General Internal Medicine, Department of Medicine at Northwestern University.[1]
>
> My immediate goal is to successfully complete a proposed project, funded by the National Institute on Disability and Rehabilitation Research (NIDRR). This study examines changes in body weight and factors, and relationships between obesity and disability in late middle age. . . . My academic activities will focus on health services research, disease management, and socioeconomic or racial/ethnic variations in lifestyle, chronic illness, health care use, and health outcomes to reduce disability and disparities.

The petitioner submits a list of conference presentations that she has delivered in the United States. Such presentations demonstrate that the petitioner has been active in her field, but they do not self-evidently set the petitioner apart from other qualified workers in her field.

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[1] The petitioner's assertions regarding her prospects for continued work at Northwestern University have been rendered moot by her subsequent relocation from Chicago to Philadelphia.

Several letters accompany the petition. The letters are from faculty members of Northwestern University and Johns Hopkins University, who worked with the petitioner while she trained or studied at those universities. These letters offer very general assessments of the petitioner's work and abilities. For example, Professor [redacted] co-director of the Institute for Health Services Research and Policy Studies, states:

> I am very impressed with [the petitioner's] recent research work and her publication record. She has fulfilled the requirements of our competitive post-doctoral program, and she will be reappointed for the second year of the two-year position. . . .
>
> As documented by the accomplishments in her curriculum vita, I believe that [the petitioner] qualifies under the applicable criteria as having extraordinary ability as a researcher in health services research.

Other witnesses likewise assert that they are "very impressed" with the petitioner's past work. The front page of one letter, from Dr. [redacted], is not in the record. One individual, Dr. [redacted] deputy director of the Center for Adolescent Health Promotion and Disease Prevention at Johns Hopkins University, states that she cannot comment on the petitioner's actual work at the Center: "I can speak to her work habits and interactions with faculty and staff. Others can speak to her research and scientific endeavors, as I was not directly involved." The letters offer very little specific information about the petitioner's "research and scientific endeavors."

The director instructed the petitioner to submit further evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits additional exhibits that she claims support a finding of eligibility. The petitioner notes a [redacted] Grant Award Notification from the U.S. Department of Education wherein I am the Project Director, and a letter from [the] Program Officer at the government agency to certify the national interest and significance of the program." Documents in the record show that the petitioner began a "one-year fellowship" with the National Institute on Disability and Rehabilitation Research on September 1, 2003, about a week after she filed the petition on August 25, 2003. While the petitioner mentioned this project in her initial submission, it had not yet begun at that time. The beneficiary of an immigrant visa petition must be eligible at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Much of the petitioner's submission concerns events that transpired after the petition's filing date.

A letter from Dr. [redacted] Switzer Research Fellowship Program Manager, is apparently the "letter from [the] Program Officer" to whom the petitioner had referred. D[redacted] tates that the petitioner's "application . . . was selected for funding from among many applications via peer review," but otherwise she offers no comment about the merit of this work.

The petitioner shows that she has received various awards for excellence from the entities where she has worked, trained or studied. Such awards amount to recognition for achievements under 8 C.F.R. § 204.5(k)(3)(ii)(F), and as such they may form part of a claim of exceptional ability. By the plain language

of the statute, aliens of exceptional ability are generally subject to the job offer requirement; they must show eligibility for the waiver over and above exceptional ability. Therefore, it follows that partial evidence of exceptional ability (such as awards from employers) are not strong evidence of eligibility for the waiver.

The petitioner submits copies of several published articles she co-authored. These articles were not published until after the filing date, but many of them are based on the petitioner's work at Johns Hopkins University, which the petitioner had completed before she filed the petition. The petitioner documents two citations of her published articles. One of these citations appears in an editorial in the same issue of the *American Journal of Preventive Medicine* in which the cited article appears. The other citation is in an article by researchers at Johns Hopkins University, which is where the cited research took place.

The director denied the petition, stating: "The petitioner has not established that her research has consistently attracted significant attention beyond the institutions where she has worked." The director also noted that the letters from the petitioner's former mentors say more about the petitioner's personal character and work habits than about the importance of her actual work (which is barely discussed in those letters). The director noted that grant funding appears to be quite common in academia, and therefore the fact that the petitioner has obtained such funding is not evidence that her projects have been unusually important or significant within the field.

On appeal, the petitioner asserts that the director "did not consider all the evidence provided." For instance, the petitioner states that her selection for a [redacted] grant shows that she "has impacted the field beyond the typical research expected of a budding health services researcher." No objective evidence, however, supports this claim.

The petitioner correctly asserts that many of her published articles reflect work that she had undertaken prior to the filing date. Nevertheless, publication is only a means of having impact on the field; it is not, itself, proof of such impact. The intrinsic merit of the petitioner's field is not in dispute, and the publication of her work allows national scope; but simply being a published author is not *prima facie* evidence of eligibility for the waiver. As discussed previously, citation of the petitioner's work has been minimal.

As further evidence of the director's failure to consider all the evidence, the petitioner states: "Letter of recommendation in the record does not appear complete." The petitioner does not explain how this is a failing on the director's part. Review of the record confirms that the first page of [redacted] letter is missing. The second page does not appear to differ in tone from the other, complete letters that had accompanied the initial filing. The petitioner does not, on appeal, submit a copy of the missing first page.

In a supplement to the appeal, the petitioner submits a brief from counsel. Counsel's introductory "Statement of the Facts" includes several statements that are not "facts" at all, but rather subjective assertions that are very much in dispute. For instance, counsel states: "As is amply documented by the supporting evidence . . . [the petitioner] is an Outstanding Researcher." Another example is counsel's claim that the petitioner's response to the director's request for evidence "clearly established petitioner's qualifications for the National Interest Waiver sought."

Counsel states: "U.S. government statistics indicate that of the approximately 60,000 medical researchers in the United States, only about 4,000 – less than seven percent – qualify as Epidemiologists. Thus, petitioner's professional contribution to the United States is statistically of a substantially greater degree than that of other U.S. medical researchers." Leaving aside counsel's failure to cite a source for the "U.S. government statistics," this argument is utterly baseless. First of all, it argues for a blanket waiver for epidemiologists. We note that section 203(b)(2)(B)(ii) of the Act creates a blanket waiver for certain physicians. There is no comparable blanket waiver for epidemiologists. The existence of section 203(b)(2)(B)(ii) proves two things: first, that Congress has the authority to create blanket waivers based on occupation, and second, that such blanket waivers must be specifically written into the law; they are not implied by the existence of general waiver provisions.

Also, the assertion that epidemiologists benefit the United States more than other medical researchers do because there are fewer of them relies on very tenuous logic. The fact that most medical researchers are not epidemiologists does not mean that epidemiologists are especially influential compared to other medical researchers. Counsel seems to divide medical researchers into only two classes – epidemiologists and other medical researchers. In fact, however, medical researchers fall into several specialties. This, however, is a peripheral criticism, because even if the petitioner had proven that epidemiology is the smallest specialty within medical research, this would not bring her any closer to qualifying for a waiver.

Counsel asserts that the United States suffers a "deficit of appropriately trained scientists in the event of an outbreak such as the Avian flu." While the threat of avian flu has certainly received a great deal of media attention of late, counsel does not document any consensus that the primary solution to this threat is to bring more epidemiologists to the United States. Also, this highly speculative argument ignores the fact that the petitioner has no claimed experience or expertise in the epidemiology of infectious disease. The distinction appears to be an important one because infectious disease propagates and spreads throughout populations, whereas conditions such as obesity and heart disease which arise independently in each patient. Public health authorities would not react to an outbreak of avian flu in the same way that they would respond to, say, high incidence of diabetes.

Counsel's apparent argument that epidemiologists deserve waivers because there aren't many of them goes against numerous principles set forth in *Matter of New York State Dept. of Transportation*, which indicates that worker shortages, specialized training, and choice of occupation are not *prima facie* grounds for a waiver.

The petitioner submits background information about the health risks of obesity. This background information concerns the intrinsic merit of the petitioner's field, which the director did not contest. There exists no blanket waiver for all researchers whose work concerns obesity, even those whose work (unlike the petitioner's) directly concerns prevention and/or treatment of obesity.

The petitioner submits documentation of three new job offers. In September 2004, the petitioner had received (but apparently rejected) job offers to be an assistant professor at Florida A&M University and an epidemiologist for the Tennessee Department of Health. The petitioner accepted a July 2005 offer to become a staff epidemiologist at DuPont Haskell Laboratory in Newark, Delaware. Counsel asserts that these offers are "a strong indication of the petitioner's standing in the field." The existence of numerous job offers does

not inherently imply that it is in the national interest to waive the job offer requirement. Given the proven existence of numerous job offers, and assuming *arguendo* that counsel is correct in claiming that there is a national "deficit" of epidemiologists, it would appear that the petitioner's situation is readily amenable to labor certification.

Counsel states that the *American Journal of Public Health* has asked the petitioner to review three manuscripts, and counsel asserts that this "is consistent with her influence in the field." It is also, however, consistent with the idea that researchers who seek to publish their own work should also assist in the peer review of work by others in the field. The petitioner has not shown that an invitation to participate in peer review is a rare privilege, rather than a common obligation, in her field.

The petitioner also submits several new witness letters. Counsel lists these new letters and states: "The letters of support from outside of the petitioner's immediate circle of colleagues show that the petitioner's work has advanced her field to a *substantially greater degree* than that of other researchers having her minimum qualifications." Almost all of these new letters are from individuals connected with Johns Hopkins University or Northwestern University, which is entirely consistent with the director's finding that the petitioner's reputation is largely confined to institutions where she has worked. The only letter from an individual independent of Johns Hopkins and Northwestern is Dr. [redacted] an associate professor at the University of Chicago. Dr[redacted] offers few specific details about the petitioner's work, and he focuses on work that the petitioner did not undertake until after the petition's August 2003 filing date. For instance, Dr. [redacted]praises the petitioner's "Switzer project" which did not begin until September 2003, and "her most recent studies." The other letters call the petitioner a leading researcher in her field, but the record simply does not offer objective support for such a claim. The witnesses also discuss the overall importance of epidemiology in the fight against obesity, but there is no indication of how the petitioner's work, in particular, has already had a nationally significant effect in that context. Describing her work does not automatically demonstrate its importance.

Counsel claims that the denial of this petition thwarts Congressional intent: "Congress' foremost purpose in enacting this legislation was to facilitate the immigration of professionals and highly trained personnel: '. . . *immigration policy can help correct . . . the need to fill increasingly sophisticated jobs for which domestic personnel cannot be found. . . .*' House of Representatives Rept. 101-723, 101st Cong., 2d Sess. Pt. 1, at 41 (1990)." The "legislation" in question, the Immigration Act of 1990, did not merely create the national interest waiver. Rather, it created the immigration classification for members of the professions holding advanced degrees (thereby replacing the old third and sixth preference classifications). The excerpt cited by counsel shows that Congress considered the job offer requirement to be integral to that classification, hence the reference to "jobs for which domestic personnel cannot be found." The labor certification process is the means by which the Department of Labor verifies that "domestic personnel cannot be found."

The petitioner is clearly a qualified epidemiologist whose services are in demand among some United States employers. The petitioner has not, however, persuasively shown that she stands out from others in her field to an extent that would warrant the special benefit of a waiver of the job offer requirement that normally applies to the classification the petitioner has chosen to seek.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.